

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SHIELDALLOY METALLURGICAL CORP.)	Docket No. 40-7102
)	
)	
(Licensing Amendment Request for)	
Decommissioning the Newfield,)	
New Jersey Facility))	

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S REPLY TO THE ANSWER OF SHIELDALLOY

Shieldalloy argues in its answer that NJDEP is not entitled to a hearing on Shieldalloy's Decommissioning Plan ("DP") on any of its contentions. Shieldalloy bases this argument largely on disputing the expert reports submitted by NJDEP. Because Shieldalloy disputes the evidence provided by NJDEP, Shieldalloy has demonstrated that genuine issues of material fact are in dispute which require a hearing pursuant to 10 C.F.R. §2.309(f)(1)(vi).

CONTENTION 1

Shieldalloy argues that NJDEP's assertion that radionuclides will easily infiltrate the relatively thin layer of soil (the vadose zone) and enter the underlying groundwater is irrelevant. Sa¹ pages 13-14. However, NJDEP presented an expert report which states that the relatively thin vadose zone, combined with the hydraulic conductivity of the native vadose zone material and the absence of an engineered liner system beneath the waste, are not favorable for the long-term protection of groundwater. Malusis Report² page 4. These characteristics demonstrate that the proposed DP would not be protective of public health and would exceed the License Termination Rule's ("LTR") radiation dose limits through groundwater pathways.

Shieldalloy also argues that this contention should be rejected because it does not raise any genuine issues of fact that are in dispute. Sa pages 14-17. However, Shieldalloy's disagreement with NJDEP's petition and expert reports, which assert that the DP underestimates the saturated hydraulic conductivity of the vadose zone and the ability of the vadose zone and saturated zone soils to provide attenuation, Malusis Report page 4, demonstrate that there exists genuine issues of factual dispute

¹"Sa" refers to Shieldalloy's answer to NJDEP's Request for a Hearing.

²"Malusis Report" refers to the report submitted by Michael Masluis, Ph.D. with NJDEP's Request for a Hearing.

that require a hearing. See 10 C.F.R. §2.309(f)(1)(vi).

Shieldalloy also disagrees with NJDEP's experts on the issue of whether consideration of the groundwater should have been excluded from the DP. Compare Sa page 16 with Gaffigan Dec.³ ¶ 18. Shieldalloy also argues that the groundwater modeling conducted in the supplement to the DP showed no significant radiological impact. Sa page 16. However, NJDEP's experts showed that this modeling was lacking on the basis that the RESRAD run used by SMC in Appendix D was not provided, there was insufficient data submitted in order to properly evaluate the MODFLOW results, and there is no reasonable justification provided as to why a well could not be placed on the edge of the contaminated zone. Spayd Report page 3; Goodman Report page 22. This disagreement demonstrates more genuine issues of fact in dispute that require a hearing. See 10 C.F.R. §2.309(f)(1)(vi).

In response to Contentions 1, 2, and 3, Shieldalloy argues that the LLRWPA does not actually require the permanent isolation of radioactive materials. However, NJDEP does argue that the LLRWPA requires the permanent isolation of the radioactive waste, which requires the rejection of the DP because rain water will infiltrate the cap and cause radionuclide contamination to the groundwater. As such, a material issue of law is in dispute which requires a hearing. See 10 C.F.R. §2.309(f)(1)(vi).

³"Gaffigan Dec." refers to the Declaration of Donna Gaffigan which was submitted with NJDEP's Request for a Hearing.